

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CYNTHIA L. WATERS

APPELLANT,

**v.
MERITAS HEALTH CORPORATION
D/B/A NORTHLAND CARDIOLOGY AND
JAMES H. MITCHELL, M.D.**

RESPONDENTS.

DOCKET NUMBER WD77843

DATE: October 13, 2015

Appeal From:

Clay County Circuit Court
The Honorable Janet L. Sutton, Judge

Appellate Judges:

Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge and S. Margene
Burnett, Special Judge

Attorneys:

James R. Bartimus and Edward D. Robertson, Jr., Leawood, KS, for appellant.

D. Bruce Keplinger and Christopher J. Lucas, Overland Park, KS, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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**MERITAS HEALTH CORPORATION
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No. WD77843

Clay County

Before Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge and S. Margene Burnett, Special Judge

Appellant Cynthia Waters ("Waters") appeals a judgment in favor of Respondents Meritas Health Corporation ("Meritas") and James H. Mitchell ("Mitchell" and collectively "Respondents") on her claim that Respondents were negligent in the care of her deceased husband Robert Waters ("Robert"). After a jury trial resulting in a verdict in favor of Respondents, Waters asserts two points on appeal. For ease of analysis, we address the points in reverse order. In Point Two, Waters argues the trial court erred in refusing to grant her Motion for Mistrial or a New Trial because they were deliberate and improper communications between Meritas and members of the jury. In Point One, Waters argues the trial court erred in refusing to submit her Instruction A, which would have submitted a broader theory of negligence that was actually submitted to the jury.

WE AFFIRM

(1) The trial court did not err in refusing to grant Waters a mistrial or a new trial, as there was no evidence that the contact at issue was "motivated by improper design." Therefore, the burden remained on Waters to show that a mistrial was warranted because the contact had an improper influence on the jury. Waters failed to show that the contact had any improper influence on the jury and, therefore, did not meet her burden. Accordingly, the trial court did abuse its discretion in refusing to grant a mistrial.

(2) The trial court did not err in refusing to submit Waters' Instruction A to the jury because Waters did not establish the appropriate standard of care and the alleged violation thereof to support the instruction. In addition, Waters failed to establish the element of causation necessary to support the submission of Instruction A.

Opinion by Gary D. Witt, Judge

October 13, 2015

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